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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/519,073

12/23/2004

Atsushi Fukui

MAM-056

7337

20374 7590 04/13/2009

KUBOVCIK & KUBOVCIK  
SUITE 1105  
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EXAMINER

LEE, CYNTHIA K

ART UNIT

PAPER NUMBER

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MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ATUSHI FUKUI; YASAYUKI KUSUMOTO; MARIKO  
TORIMAE  
HIROSHI NAKAMURA

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Application 10/519,073  
Technology Center 1700

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Mailed: April 13, 2009

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Before KRISTA ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL

This application was electronically received by the Board of Patent Appeals and Interferences on February 04, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed on December 29, 2008, in response to the Examiner's Answer mailed October 29, 2008.

Title 37, Code of Federal Regulations, §41.43 states:

(a)(1)... the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a *supplemental examiner's answer* responding to any new issue raised in the reply brief. (emphasis added)

The Communication mailed March 20, 2009, was an improper acknowledgment of the Reply Brief, as it constitutes a Supplemental Examiner's Answer as per MPEP § 1208, part II. A Supplemental Examiner's Answers requires a Director or designees approval.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) vacate the Communication mailed March 20, 2009; and,
- 2) generate and mail either:
  - a) a revised Communication properly acknowledging to the Reply Brief dated December 29, 2008 in accordance with MPEP§ 1208, part II.; OR

b) issue a Supplemental Examiner's Answer with the required signature (Technology Center Director or designee), if appropriate;

and,

3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/MV/MAT

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